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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1860

Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Feuer, Lieber, and Ma)
(Coauthor: Senator Migden)

January 30, 2008

An act to add Chapter 2 (commencing with Section 108040) to Part 3 of Division 104 of, and to repeal the heading of Chapter 2 of Part 3 of Division 104 of, the Health and Safety Code, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1860, as amended, Huffman. Unsafe products: recall or warning. Existing federal law authorizes the United States Consumer Product Safety Commission to establish and enforce product safety standards that it finds necessary to protect against unreasonable risk of injury. Once the commission staff determines a product violates a specific statute or regulation, the staff notifies the responsible manufacturer, importer, distributor, or retailer, and assists the responsible firm with the development and implementation of a remedial repair, replacement, or refund program, also known as a recall.

Existing state law provides for the establishment and enforcement of various product safety standards for consumer products, including, among others, requiring specified warning labels for water heaters, and prohibiting the sale of contaminated toys and lead-tainted tableware.

Existing state law prohibits the manufacture, production, preparation, compounding, packing, selling, offering for sale, or keeping for sale within the State of California, or the introduction into this state, of a misbranded hazardous substance or banned hazardous substance. Any violation of this provision is punishable as a misdemeanor. Existing law requires the manufacturer, distributor, or retailer of any banned hazardous substance to repurchase the article or substance from the person to whom it was sold, and to refund the purchase price paid.

This bill would prohibit a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from manufacturing, remanufacturing, ~~retrofitting~~, distributing, selling at wholesale or retail, contracting to sell or resell, leasing, or subletting, or otherwise placing into the stream of commerce, a product that is unsafe knowing that the product is unsafe, as specified. The bill would provide for an unsafe product to be retrofitted, and would permit the sale of the retrofitted product if accompanied by a specified notice.

The bill would require a commercial dealer, manufacturer, importer, distributor, or wholesaler that has placed into the stream of commerce a product for which a recall or warning has subsequently been issued to initiate specified steps within 24 hours after issuing or receiving the recall notice or warning, including contacting all of its customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular product, and posting prominently on its Internet Web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question and other specified information.

The bill would require the manufacturer of the product to provide for the safe return of the product to the manufacturer at no cost to the end consumer or retailer, and would require the manufacturer to properly dispose of the product and not export the product, or permit it to be exported, for disposal in a manner that poses a significant risk to the public health or the environment. The bill would require the manufacturer to prepare and, at the request of the Department of Toxic Substances Control, submit within 28 days of the date of the request, technical documentation or other information showing that the manufacturer complied with these requirements. The bill would impose

additional requirements upon retailers of products determined to be unsafe, including removing the product from the shelves of its stores or programming its registers to ensure that the item cannot be sold, within 3 days after receiving the recall notice or warning of the unsafe product.

This bill would subject a person who violates these provisions to a civil penalty of up to \$1,000 for each occurrence, up to a maximum of \$20,000. If the violation is committed after a previous imposition of a civil penalty or with the intent to mislead or defraud, or the violation concerns a product primarily used by children or marketed for children, the bill would make the violation punishable by imprisonment in a county jail for not more than one year or in the state prison, by a fine of not more than \$10,000, or by both that imprisonment and fine. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Chapter 2 of Part 3 of Division
2 104 of the Health and Safety Code is repealed.

3 SEC. 2. Chapter 2 (commencing with Section 108040) is added
4 to Part 3 of Division 104 of the Health and Safety Code, to read:

5
6 CHAPTER 2. PRODUCT RECALL SAFETY AND PROTECTION ACT

7
8 108040. This chapter shall be known, and may be cited, as the
9 Product Recall Safety and Protection Act.

10 108042. As used in this chapter, the following terms have the
11 following meanings:

12 (a) "Commercial dealer" means any person who deals in
13 products or who otherwise by his or her occupation holds himself
14 or herself out as having knowledge or skill peculiar to products,
15 or any person who is in the business of remanufacturing,

1 retrofitting, selling, leasing, subletting, or otherwise placing into
2 the stream of commerce, a product.

3 (b) “Department” means the Department of Toxic Substances
4 Control.

5 (c) “Distributor” and “wholesaler” means any person, other than
6 a manufacturer or retailer, who sells or resells, or otherwise places
7 into the stream of commerce, a product.

8 (d) “End consumer” means a person who purchases a product
9 for any purpose other than resale.

10 (e) “First seller” means any retailer selling a product that has
11 not been used or has not previously been owned. A first seller does
12 not include an entity such as a secondhand retail dealer, thrift shop,
13 resale store, or any other establishment or individual, agent, or
14 employee thereof that sells, distributes, rents, or leases products
15 of any kind.

16 (f) “Importer” means any person who brings into this country,
17 and places into the stream of commerce, a product.

18 (g) “Manufacturer” means any person who makes, and places
19 into the stream of commerce, a product.

20 (h) “Person” means a natural person, firm, corporation, limited
21 liability company, or association, or an employee or agent thereof.

22 (i) “Product” means any article, or component part thereof,
23 produced or distributed (1) for sale to a consumer for use in or
24 around a permanent or temporary household or residence, a school,
25 in recreation, or otherwise, or (2) for personal use, consumption,
26 or enjoyment of a consumer in or around a permanent or temporary
27 household or residence, a school, in recreation, or otherwise.
28 “Product” does not include food, drugs, cosmetics, pesticides (as
29 defined by the Federal Insecticide, Fungicide, and Rodenticide
30 Act (7 U.S.C. Sec. 136 et seq.)), medical devices, firearms and
31 ammunition, boats, motor vehicles, aircraft, or tobacco and tobacco
32 products.

33 (j) “Recall” means any repair, replacement, or refund program
34 implemented in accordance with state or federal law upon a
35 determination that a product violates a statute or regulation, and
36 notification to the product manufacturer, importer, distributor, or
37 retailer that corrective action to address the violation is warranted.
38 “Recall” includes a voluntary recall where a product is returned
39 to the manufacturer for repair or replacement, usually due to defects

1 or safety concerns, or public notice that a product is defective and
2 must be returned to the manufacturer or retailer.

3 (k) "Retailer" means any person other than a manufacturer,
4 distributor, or wholesaler who sells, distributes, sublets, or leases
5 consumer goods of any kind.

6 (l) "Sell" or "sale" means a transfer for consideration of title
7 or of the right to use, by lease or sales contract, including, but not
8 limited to, transactions conducted through sales outlets, catalogs,
9 or the Internet or any other similar electronic means.

10 108044. (a) No commercial dealer, manufacturer, importer,
11 distributor, wholesaler, or retailer shall manufacture,
12 remanufacture, ~~retrofit~~, distribute, sell at wholesale or retail,
13 contract to sell or resell, lease, or sublet, or otherwise place into
14 the stream of commerce, a product that is unsafe knowing that the
15 product is unsafe, as defined in subdivision (b).

16 (b) A product shall be deemed unsafe for purposes of this
17 chapter only if it meets one or more of the following criteria:

18 (1) The product does not conform to state and federal laws and
19 regulations setting forth standards for the product.

20 (2) The product has been recalled for any safety hazard reason,
21 or it has been recalled for any safety hazard reason in cooperation
22 with an agency of the federal government or the product's
23 commercial dealer, manufacturer, importer, distributor, or
24 wholesaler, and the recall has not been rescinded.

25 (3) A state or federal agency, or the product's commercial dealer,
26 manufacturer, importer, distributor, or wholesaler, has issued a
27 warning that the intended use of a specific product constitutes a
28 safety hazard, and the warning has not been rescinded.

29 (c) (1) An unsafe product, as determined pursuant to subdivision
30 (b), may be retrofitted if the retrofit has been approved by the
31 agency issuing the recall or warning, or the agency responsible for
32 approving the retrofit if it is different from the agency issuing the
33 recall or warning.

34 (2) A retrofitted product may be sold if it is accompanied at the
35 time of sale by a notice declaring that it is safe to use. The notice
36 shall include all of the following:

37 (A) A description of the original problem that made the recalled
38 product unsafe.

39 (B) A description of the retrofit that explains how the original
40 problem was eliminated and declaring that it is now safe to use.

1 (C) The name and address of the commercial dealer,
2 manufacturer, importer, distributor, or wholesaler who
3 accomplished the retrofit, certifying that the work was done, along
4 with the name and model number of the product retrofitted.

5 (3) The commercial dealer, manufacturer, importer, distributor,
6 or wholesaler is responsible for ensuring that the notice described
7 in paragraph (2) is present with the retrofitted product at the time
8 of sale. This paragraph and paragraph (2) shall not apply, *and the*
9 *product may be sold*, if either subparagraph (A) or (B) applies:

10 (A) The retrofit meets all of the following:

11 (i) The product requires assembly by the consumer.

12 (ii) The retrofit kit is provided with the product by the
13 commercial dealer, manufacturer, importer, distributor, or
14 wholesaler.

15 (iii) The retrofit kit is accompanied at the time of sale by
16 instructions explaining how to apply the retrofit.

17 (B) The seller of a previously unsold product or the entity to
18 whom unsold products had been returned under the terms of the
19 recall accomplishes the approved or recommended repair prior to
20 sale.

21 108046. (a) A commercial dealer, manufacturer, importer,
22 distributor, or wholesaler that has placed into the stream of
23 commerce any product for which a recall or warning has
24 subsequently been issued, shall initiate the following steps within
25 24 hours after issuing or receiving the recall notice or warning:

26 (1) Contact all of its customers, other than end consumers, to
27 whom it sold, leased, sublet, or transferred that particular product.
28 The contact shall be made to a person designated for that product
29 by the customer and shall include a copy of the recall notice or
30 warning.

31 (2) If the commercial dealer, manufacturer, importer, distributor,
32 or wholesaler maintains an Internet Web site, the entity shall place
33 prominently on the homepage or first point of entry of its Web
34 site, a link to recall or warning information that contains the
35 specific recall notice or warning that was issued for the product
36 in question. The recall or warning information shall include a
37 description of the product, the reason for the recall or warning, a
38 picture of the product, and instructions on how to participate in
39 the recall or warning. The information shall include only the
40 product recall or warning information and shall not include sales

1 or marketing information on that product or any other product,
2 excluding return and exchange policies. The recall or warning
3 information shall permit participation in the recall or warning
4 through the Web site of the commercial dealer, manufacturer,
5 importer, distributor, or wholesaler.

6 (3) If the commercial dealer, manufacturer, importer, distributor,
7 or wholesaler sold directly to an end consumer, and the consumer
8 provided either a shipping address or e-mail address at the time of
9 sale or that consumer contact information is otherwise on file, then
10 the commercial dealer, manufacturer, importer, distributor, or
11 wholesaler shall send a notice of the recall or warning to the
12 consumer at each of those addresses. The notice shall include a
13 description of the product, the reason for the recall or warning, a
14 picture of the product, and instructions on how to participate in
15 the recall or warning. The notice shall include only the product
16 recall or warning information and shall not include sales or
17 marketing information on that product or any other product,
18 excluding return and exchange policies.

19 (b) (1) The manufacturer of the product shall provide for the
20 safe return of the product to the manufacturer at no cost to the end
21 consumer or retailer.

22 (2) The manufacturer shall properly dispose of the product in
23 a manner that is in compliance with all applicable federal, state,
24 and local laws, regulations, and ordinances, and shall not export
25 the product, or permit it to be exported, for disposal in a manner
26 that poses a significant risk to the public health or the environment.

27 (3) The manufacturer shall prepare and, at the request of the
28 Department of Toxic Substances Control, submit within 28 days
29 of the date of the request, technical documentation or other
30 information showing that the manufacturer complied with
31 paragraphs (1) and (2). For recalled products regulated by the
32 Consumer Product Safety Commission, the department shall accept
33 duplicate copies of information submitted to the commission in
34 accordance with Sections 15 and 37 of the Consumer Products
35 Safety Act (15 U.S.C. Secs. 2064 and 2084) as well as Section
36 102 of the Child Safety Protection Act (Public Law 103-267).

37 (c) If a retailer receives notice of a recall or warning regarding
38 a product from a commercial dealer, manufacturer, importer,
39 distributor, wholesaler, or state or federal agency, and if the retailer

1 during the previous 18 months offered the product for sale, then
2 the retailer shall do the following:

3 (1) Within three days after receiving the notice or warning by
4 the person designated by the retailer, the retailer shall remove the
5 product from the shelves of its stores or program its registers to
6 ensure that the item cannot be sold.

7 (2) If the product was sold through the retailer's Internet Web
8 site, then within three days after receiving the notice or warning
9 by the person designated by the retailer, the retailer shall remove
10 the product from the Web site or remove the ability to purchase
11 the product through the Web site.

12 (3) If an e-mail or shipping address was provided at the time of
13 purchasing a product on the retailer's Internet Web site for which
14 a recall or warning was subsequently issued, or if the retailer
15 otherwise has the purchaser's contact information on file, the
16 retailer shall contact the purchaser and send the recall notice or
17 warning information to each of those addresses. The recall notice
18 or warning information shall include a description of the product,
19 the reason for the recall or warning, a picture of the product, and
20 instructions on how to participate in the recall or warning. The
21 information shall include only the product recall or warning
22 information and shall not include sales or marketing information
23 on that product or any other product, excluding return and exchange
24 policies. The retailer shall comply with this paragraph within 30
25 days of receiving the notice of the recall or warning.

26 (4) Within three days after receiving the recall notice or warning
27 by the person designated by the retailer, the retailer shall post in
28 a prominent location in each retail store the recall notice or
29 warning. The notice or warning shall remain posted for at least 60
30 days.

31 (5) If the product for which a recall or warning was issued was
32 sold on the retailer's Internet Web site, the retailer shall, within
33 three days after receiving the recall notice or warning by the person
34 designated by the retailer, post on the homepage or first point of
35 entry of its Web site a link to recall or warning information that
36 contains the specific recall notice or warning that was issued for
37 the product in question. The recall or warning information shall
38 include a description of the product, the reason for the recall or
39 warning, a picture of the product, if one was provided, and
40 instructions on how to participate in the recall or warning. The

1 information shall include only the product recall or warning
2 information and shall not include sales or marketing information
3 on that product or any other product, excluding return and exchange
4 policies.

5 (6) A retailer who is not a first seller shall comply with this
6 subdivision, except that the retailer has five days to comply with
7 paragraphs (1) and (2).

8 (7) A retailer who is a first seller shall accept any recalled
9 product for the purpose of returning it to the manufacturer or
10 distributor.

11 (d) A commercial dealer, manufacturer, importer, wholesaler,
12 or distributor who is also a retailer shall comply with subdivisions
13 (a), (b), and (c), as applicable.

14 108048. Nothing in this chapter relieves a commercial dealer,
15 manufacturer, importer, distributor, wholesaler, or retailer from
16 compliance with stricter requirements that may be imposed by an
17 agency of the federal government.

18 108050. (a) Any violation of this chapter shall be subject to a
19 civil penalty of up to one thousand dollars (\$1,000) for each
20 occurrence, up to a maximum of twenty thousand dollars (\$20,000).

21 (b) An action for a civil penalty pursuant to subdivision (a) may
22 be brought by a public prosecutor and shall be enforceable as a
23 civil judgment.

24 (c) The remedies under this section are in addition to, and do
25 not supersede or limit, any and all other remedies, civil or criminal.

26 (d) If the violation of this chapter is committed after a previous
27 imposition of a civil penalty under subdivision (a), if the violation
28 is committed with intent to mislead or defraud, or if the violation
29 concerns a product primarily used by children or marketed for
30 children, the person shall be punished by imprisonment in a county
31 jail for not more than one year or in the state prison, by a fine of
32 not more than \$10,000, or by both that imprisonment and fine.

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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